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2011 IL App (3d) 100949-U

Order filed December 29, 2011

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2011

CHRISTOPHER B. BURKE  
ENGINEERING, LTD.,

Plaintiff-Appellant,

v.

GLEN W. HARKINS, CAROL A.  
HARKINS, HERITAGE BANK OF  
CENTRAL ILLINOIS, DONALD ALLISON,  
ANN ALLISON and UNKNOWN OWNERS  
and NONRECORD CLAIMANTS,

Defendants-Appellees.

) Appeal from the Circuit Court  
) of the 10th Judicial Circuit,  
) Peoria County, Illinois,  
)  
) Appeal No. 3-10-0949  
) Circuit No. 09-CH-589  
)  
) Honorable  
) Stuart P. Borden,  
) Judge, Presiding.

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JUSTICE O'BRIEN delivered the judgment of the court.  
Presiding Justice Carter and Justice Wright concurred in the judgment.

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**ORDER**

¶ 1       *Held:* A trial court judgment in favor of defendants in an action to foreclose a mechanics lien was reversed because there was a question of fact as to whether plaintiff's lien contained a sufficiently adequate legal description under section 7 of the Illinois Mechanics Lien Act.

¶ 2       Plaintiff Christopher B. Burke Engineering, Ltd., brought suit against defendants,

Glen W. and Carol A. Harkins (collectively Harkins), Heritage Bank of Central Illinois (Heritage Bank), Donald and Ann Allison (collectively Allison), and others, to foreclose a mechanics lien. The trial court granted Allison's motion to dismiss pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2008)), finding that plaintiff failed to comply with section 7 of the Illinois Mechanics Lien Act (770 ILCS 60/7 (West 2008)). Thereafter, the trial court granted Heritage Bank's motion for summary judgment on the same basis. Plaintiff appealed, and we reverse and remand.

¶ 3

### FACTS

¶ 4

Plaintiff alleged that he contracted with Harkins on April 30, 2008, to furnish labor and materials to a tract of real property being developed as a subdivision. That real property consisted of previously unplatted land and two previously platted lots (Lots 212 and 213 of the Frietsch Subdivision). The property was replatted, and the final plat for Crest Ridge Estates was recorded on September 19, 2008, designating the property as Lots 1-48 and Outlot A. Lot 212 of Frietsch Subdivision was replatted as Lot 37 of Crest Ridge Estates.

¶ 5

Harkins sold one lot, Lot 37 of Crest Ridge Estates, to Allison on October 17, 2008. Plaintiff alleged that it completed work on the contract on March 27, 2009. Plaintiff alleged that Harkins failed to pay the balance of the contract, and on May 20, 2009, plaintiff recorded a claim for lien. The legal description as stated by plaintiff in the mechanics lien was the same property description as that attached to a mortgage given by Harkins to Heritage Bank, recorded on August 11, 2008, although plaintiff's lien contained additional property identification numbers. The lien did not made any

reference to Crest Ridge Estates. Heritage Bank claimed an interest to the property pursuant to the mortgage.

¶ 6 Allison filed a motion to dismiss pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2008)), claiming, *inter alia*, that the lien contained an inadequate legal description under section 7 of the Illinois Mechanics Lien Act (770 ILCS 60/7 (West 2008)). Allison argued that the metes and bounds description, in addition to a description of two platted lots in Frietsch Subdivision, was inadequate to describe Allison's Lot 37 of Crest Ridge Estates. The trial court granted the motion to dismiss. The trial court found that plaintiff's reference in its mechanics lien to Lot 212 of Frietsch Subdivision was not in compliance with the Mechanics Lien Act because that description had been completely superceded by the September 2008 plat for Crest Ridge subdivision that designated Allison's lot as Lot 37.

¶ 7 The Bank filed a motion for summary judgment based on the same theory, and the trial court granted the Bank's motion for summary judgment. The trial court denied plaintiff's motion to reconsider both rulings. The trial court found there was no just reason to delay the appeal pursuant to Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010), and plaintiff appealed.

¶ 8 ANALYSIS

¶ 9 Plaintiff argues that the trial court erred in holding the property description in plaintiff's claim of lien did not comply with section 7 of the Mechanics Lien Act. Allison argues that the Mechanics Lien Act must be strictly construed, and the trial court correctly determined that the lien did not provide a sufficient description of their lot, even though

the lien included the current and correct property identification number for their lot.

Allison argues that the lien was internally inconsistent because the current property identification numbers did not match the retired numbers associated with the previous legal description. Also, the lien only referenced 29 out of the 49 new property identification numbers. The Bank also argues that the trial court correctly determined that the lien was unenforceable because it contained an insufficient legal description of the property.

¶ 10 The trial court granted Allison's motion to dismiss pursuant to section 2-619 of the Code of Civil Procedure. A motion to dismiss under section 2-619 of the Code of Civil Procedure admits the legal sufficiency of a plaintiff's claim, but asserts certain defects or defenses outside the pleading that defeat the claim. 735 ILCS 5/2-619 (West 2008). Our standard of review of a trial court's grant of a section 2-619 motion to dismiss is *de novo*. *Orlak v. Loyola Univ. Health Sys.*, 228 Ill. 2d 1, 7 (2007). The question before us is whether, as a matter of law, the property description contained in plaintiff's mechanics lien failed to sufficiently identify the property under section 7 of the Mechanics Lien Act.

¶ 11 Mechanics liens are statutory in nature and, as such, must be strictly construed in accordance the statute that created them. *Steinberg v. Chicago Title and Trust Co.*, 142 Ill. App. 3d 601 (1986). Section 7 of the Mechanics Lien Act provides that no contractor shall be allowed to enforce a lien unless it files a claim for lien that includes "a sufficiently correct description of the lot, lots or tracts of land to identify the same." 770 ILCS 60/7(a)(West 2008). The first district of our court, in *Steinberg*, faced a situation

where a contractor used a metes and bounds description, when a plat had been recorded for the subject property. 142 Ill. App. 3d 601. That court found that the metes and bounds description did not provide a third-party purchaser or encumbrancer with enough information to readily identify the property through the use of local public records. 142 Ill. App. 3d at 606. Later, in *Cordeck Sales, Inc., v. Construction Systems, Inc.*, the same court clarified that *Steinberg* stood for the proposition that a metes and bounds description, when a subsequent plat of survey is available, may be found inadequate. 394 Ill. App. 3d 870 (2009). In *Cordeck*, the contractor used a prior plat of survey description instead of a more recent legal description. 394 Ill. App. 3d 870. That court held that the lien's description was sufficient under the Mechanics Lien Act because, in addition to the prior plat of survey description, it also contained the common street address and property index numbers. *Cordeck Sales, Inc.*, 394 Ill. App. 3d at 874-75 .

¶ 12 In this case, plaintiff described the property in its mechanics lien by using the metes and bounds description for the previously unplatted property, the prior lot numbers of the two lots that had been plotted as part of the Frietsch Subdivision, and 29 current property identification numbers (referencing 29 of the newly platted lots in Crest Ridge Estates). Allison's current property identification number was referenced, not the property identification number that was associated with Frietsch Subdivision. We find that the trial court misconstrued the holding in *Steinberg*, and erred in holding that plaintiff's lien did not comport with the Mechanics Lien Act because it did not reference the most recent legal description. While the legal description used by plaintiff may ultimately be found inadequate, there is a question of fact whether the description, which

referenced a prior plat but also current property identification numbers, was sufficiently correct so as to allow identification by a third-party purchaser.

¶ 13 Heritage Bank was granted summary judgment based on the same legal conclusion, namely, that the property description in plaintiff's mechanic's lien was inadequate under section 7 of the Mechanics Lien Act. Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005© (West 2008); *National City Mortgage v. Bergman*, 405 Ill. App. 3d 102 (2010). We review *de novo* a trial court's grant of summary judgment. *National City Mortgage*, 405 Ill. App. 3d at 105. Since we have already found that there is a question of fact whether the legal description in plaintiff's lien was adequate under the Mechanics Lien Act, we also reverse the grant of summary judgment to Heritage Bank.

#### CONCLUSION

¶ 14 The judgment of the circuit court of Peoria County is reversed and remanded for further proceedings.

¶ 15 Reversed and remanded.